



UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450  
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**MAILED**

**OCT 15 2010**

**OFFICE OF PETITIONS**

Bradley Cooper  
7323 Emerald Glen Dr.  
Sugar Land TX 77479

In re Application of Bradley Cooper	:	
Application No. 10/783,119	:	Decision on Petition
Filing Date: February 20, 2004	:	
For: Pitcher's Jacket	:	

This is a decision on the petition filed June 6, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application. The Office regrets the delay in the issuance of the instant decision.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

**Facts**

The Office mailed a non-final Office action on October 1, 2004. The Office action set a three-month shortened statutory period for reply.

The fee necessary to obtain a one-month extension of time increased from \$55 to \$60 on December 8, 2004.

On December 22, 2004, petitioner filed a request for a one-month extension of time along with a check for \$55.

A reply to the Office action was mailed January 31, 2005.

A domestic return receipt supplied by Petitioner appears to indicate the reply was physically received by the Office on Thursday, February 3, 2005.

The Office mailed a Notice of Abandonment on May 13, 2005.

### **Discussion**

Petitioner states the application is not abandoned because a one-month extension of time was obtained and the reply was "mailed 1/31/2005, which is in compliance with the one month extension that required a reply by 2/01/2005."

A review of the record indicates a one-month extension of time was *not* obtained in this case. The fee for a one-month extension of time on December 22, 2004, when the fee was paid, was \$60. Petitioner only filed \$55 on December 22, 2004.

Since a one-month extension of time was not obtained, the application became abandoned on Tuesday, January 4, 2010.<sup>1</sup>

Even if a one-month extension of time had been obtained, the instant petition could not be granted.

The reply was not mailed in compliance with 37 CFR 1.8 or 37 CFR 1.10. Absent compliance with 37 CFR 1.8 or 37 CFR 1.10, the date a paper is physically received by the Office, not the date the paper is mailed, will determine if the paper is timely. A one-month extension of time would have only extended the period for reply to February 1, 2005. However, the reply was not received until February 3, 2005. Therefore, the reply would have been untimely even if a one-month extension of time had been obtained.

In view of the prior discussion, the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee (\$810 for a small entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A copy of a PDF "fillable" petition under 37 CFR 1.137(b) form can be found at: [http://www.uspto.gov/web/forms/sb0064\\_fill.pdf](http://www.uspto.gov/web/forms/sb0064_fill.pdf).

### **The \$55 Fee**

Since the \$55 payment was insufficient to obtain an extension of time and further payment for an extension of time was not submitted, the \$55 is refundable. Therefore, the Office has scheduled a refund of the \$55.

### **The Application Number**

The instant petition listed the application number as 10/783,199. However, the correct application number is 10/783,119. Petitioner should ensure any future correspondence involving this application includes the correct application number.

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<sup>1</sup> January 1, 2005, was a Saturday, and January 2, 2005, was a Sunday. Therefore, a reply could have been timely filed as late as January 3, 2005.

### 37 CFR 1.8

As a courtesy, The Office provides the following discussion of 37 CFR 1.8.

37 CFR 1.8 provides "Certificate of Mailing" procedures one may use to ensure certain papers mailed to the Office before the expiration of a period for reply will be treated as timely even if the papers are not physically received by the USPTO until after the expiration of a period for reply. For example, suppose a reply to an Office action is due on or before May 1, 2006, and a reply is mailed on May 1, 2006, but not physically received by the Office until May 5, 2006. *If* the reply was properly mailed using "Certificate of Mailing" procedures, the reply will be considered timely even though the reply was not received by the USPTO until May 5, 2006.

In addition to ensuring a paper is considered timely, "Certificate of Mailing" procedures can allow a party to prove a paper was timely mailed in circumstances where USPTO records fail to indicate a reply to an Office action or notice was ever filed.

#### Step 1

When using "Certificate of Mailing" procedures, a party must place the proper language on a portion of each paper being submitted and/or place the certification language on a separate sheet.

A suggested format one can use for a Certificate of Mailing appearing on a portion of each paper submitted is shown below.

#### Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage on (put the DATE) as first class mail in an envelope addressed to:

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature: \_\_\_\_\_

One may also use "Certificate of Mailing" procedures to submit a paper by facsimile transmission.

If the procedures are used for a facsimile transmission, the certification is called a "Certificate of Transmission."

A suggested format for the Certificate of Transmission can be found below.

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on (put the date).

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature: \_\_\_\_\_

If a party includes the certificate on a separate sheet instead of, or in addition to, including a certificate on each paper filed, the separate sheet must:

- (1) Be signed,
- (2) Be securely attached to the papers filed, AND
- (3) Fully and completely identify each paper being attached, e.g., reply to final rejection, Notice of Appeal, etc.

An example of a paper which includes the certification language and allows a party to identify each paper being mailed or transmitted is attached. A PDF "fillable" copy of the paper can be found at: <http://www.uspto.gov/web/forms/sb0021.pdf>

Step 2

The individual who will be mailing or sending the paper by facsimile transmission should complete the information in the Certificate of Mailing or Transmission and sign the certificate *on the date it will be mailed or transmitted*.

Step 3

*After* the certificate has been properly completed (dated, signed, etc.), the individual who will be sending the paper should make a copy of the paper and retain the copy for the individual's records.

Step 4

If the paper is mailed to the Office, the paper must be mailed by first class mail using the United States Postal Service on the date listed in the certificate. The term "first class mail" includes first class mail and papers mailed with the USPS by Express Mail or Priority Mail.

If a paper is sent to the Office via facsimile transmission, the individual sending the paper should retain the sheet from the sending unit verifying the transmission was successful.

### Additional Information

It should be noted that the benefits of a Certificate of Mailing/Transmission procedures do not apply to all papers.<sup>2</sup> The procedures do not apply to:

1. Original application papers,
2. Continued Prosecution Applications,
3. Papers related to interference practice,
4. The filing of papers in an international application, and
5. The filing of a copy of international applications necessary to enter the national stage.

One may use a Certificate of *Transmission* for some, but not all, drawing submissions. However, since sending a paper by facsimile transmissions degrades the quality of an image on the paper, a person in the United States may wish to mail drawings even in circumstances where the drawings could be submitted by facsimile transmission.

### Conclusion

Petitioner has failed to prove a timely reply was filed in response to the non-final Office action mailed October 1, 2004. Therefore, the application is abandoned and the holding of abandonment will not be withdrawn.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.<sup>3</sup>  
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300  
Attn: Office of Petitions

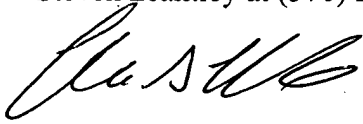
By hand: U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

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<sup>2</sup> Certificate of Mailing or Transmission practice does not apply to the submission of original application papers, Continued Prosecution Applications, some papers related to interference practice, the filing of an international application, the filing of papers in an international application, and the filing of copy of international application and fee required to enter national stage.

<sup>3</sup> General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'C. S. Brantley', written in a cursive style.

Charles Steven Brantley  
Senior Petitions Attorney  
Office of Petitions

Attached: Form PTO/SB/21